

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GENE ALLEN,

Petitioner,

v.

STATE OF NEVADA, et al.,

Respondents.

Case No. 3:15-cv-00088-MMD-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. The Court has conducted a preliminary review of the petition and the amended petition in this case, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court concludes that the petition and amended petition in the instant action must be dismissed. This action challenges petitioner's continued confinement and the denial of parole by the Nevada Board of Parole Commissioners (BPC). Petitioner previously filed a habeas corpus petition in this Court challenging his continued confinement and denial of parole, filed under case number 3:14-cv-00520-RCJ-VPC. In case number 3:14-cv-00520-RCJ-VPC, petitioner has been appointed counsel, and an amended petition has been filed. (Docket in 3:14-cv-00520-RCJ-VPC, at dkt. no. 44). Case number 3:14-cv-00520-RCJ-VPC is still pending and the Court has not yet ruled on the merits of the amended petition. Because petitioner is adequately represented by counsel in case number 3:14-cv-00520-RCJ-VPC, the instant *pro se* petition is dismissed as duplicative and petitioner's motions for the appointment of counsel are denied.

1 In order to proceed with any appeal, petitioner must receive a certificate of
2 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v.*
3 *Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); see also *United States v. Mikels*, 236
4 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial
5 showing of the denial of a constitutional right” to warrant a certificate of appealability.
6 *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The
7 petitioner must demonstrate that reasonable jurists would find the district court’s
8 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529
9 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of
10 demonstrating that the issues are debatable among jurists of reason; that a court could
11 resolve the issues differently; or that the questions are adequate to deserve
12 encouragement to proceed further. *Id.* In this case, no reasonable jurist would find this
13 Court’s dismissal of the petition debatable or wrong. The Court therefore denies
14 petitioner a certificate of appealability.

15 It is therefore ordered that this action is dismissed with prejudice as duplicative of
16 the petition filed in case number 3:14-cv-00520-RCJ-VPC.

17 It is further ordered that petitioner’s application for leave to proceed *in forma*
18 *pauperis* (dkt. no. 1) is denied.


19 It is further ordered that petitioner’s motion for an evidentiary hearing (dkt. no. 3)
20 is denied.

21 It is further ordered that petitioner’s motions for the appointment of counsel (dkt.
22 nos. 6 & 7) are denied.

23 It is further ordered that petitioner is denied a certificate of appealability.

24 It is further ordered that the Clerk shall enter judgment accordingly.

25 DATED THIS 30th day of March 2016.

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27 
28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE